IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA	)
	)
Plaintiff,	)
	)
v.	) No. 4:16CR163 RWS
	)
OSCAR STEINMETZ	)
	)
Defendant.	)

MOTION IN LIMINE

COMES NOW defendant OSCAR STEINMETZ, through his attorney, Lucille G. Liggett, Assistant Federal Public Defender, and moves this Court for an order prohibiting the Government from introducing into evidence through the testimony of any witness any acts of child molestation or sexual abuse. In support thereof, Defendant states to the Court the following:

BACKGROUND FACTS

On April 22, 2015, the complaining witness was interviewed by a police officer with the Maryland Heights Police Department. The witness gave a statement to the officer and accused Steinmetz of molesting her from 1999 to 2003. Steinmetz was married to the complaining witness' mother and was the witness' stepfather. The complaining witness also accused him of taking nude photographs of her. On May 1, 2015, officers with the Maryland Heights Police Department arrested Steinmetz at his place of employment and transported him to the Maryland Heights Police Department. After hours of interrogation, Steinmetz signed a consent to search form for his home and a consent to search form for a forensic evaluation of any items seized from the home. Officers searched the home and seized several computers, several external hard drives, two SD card readers, a Kodak camera, a flash drive, 199 Anime DVD's, and a journal book. A detective at RCCEEG performed a forensic evaluation on the items seized and located 26 photographs of the complaining witness on the two western digital hard drives. Steinmetz is charged with one count of production of child pornography in violation of Title 18 USC § 2251(a).

401 RELEVANCY

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Fed. R. Evid. 401. Irrelevant evidence is not admissible. Fed. R. Evid. 402. Any testimony elicited by witnesses as to acts of child molestation or sexual abuse is not relevant in determining whether Steinmetz committed the offense of production of child pornography. Child molestation or sexual abuse is not an element of the offense of production of child pornography. Testimony as to acts of child molestation or sexual abuse does not make the fact of Steinmetz producing child pornography more or less probable. Therefore, evidence of child molestation or sexual abuse is not relevant and should not be admitted in this case.

403 BALANCING TEST

Defendant anticipates that the Government will seek to introduce evidence of child molestation or sexual abuse through the testimony of witnesses in the case-in-chief. A court may exclude evidence as long as its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. "if an evidentiary alternative has equal or greater probative value and poses a lower risk of unfair prejudice, the trial court should "discount" the probative value of the disputed evidence and exclude it if the risk of unfair prejudice substantially outweighs its discounted probative value." *U.S. v. Betcher*, 267 F.3d 767, 773 (8th Cir. 2001).

1. **Probative value**

The probative value of any witness' testimony as to acts of child molestation or sexual abuse is weak at best. Steinmetz is charged with production of child pornography and not with acts of child molestation or sexual abuse. Evidence of child molestation or sexual abuse is not an element of the offense of production of child pornography.

2. **Unfair Prejudice**

Unfair prejudice means an undue tendency to suggest a decision on an improper basis. *Betcher*, 267 F.3d at 825. Unfair prejudice "speaks to the capacity of some concededly relevant evidence to lure the fact-finder into declaring guilty on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997).

In this case, the introduction of any testimony of child molestation or sexual abuse is highly prejudicial. Such evidence would only serve to prejudice the jury against Steinmetz without offering any probative value to the issue before the jury, that is, whether Steinmetz produced child pornography. The elements of production of child pornography are that a defendant: knowingly attempted to employ, use, persuade, induce, entice and coerce a minor to engage in sexually explicit conduct and that the sexually explicit conduct was for the purpose of producing visual depictions of such conduct and such depictions were produced using materials that had been mailed, shipped or transported in interstate or foreign commerce, in violation of Title 18 U.S.C. § 2251(a). The Government does not have to prove that a defendant committed acts or child molestation or sexual abuse.

Further, any testimony by the complaining witness or other witnesses in this case about acts of child molestation or sexual abuse will have a significant emotional impact on the jury and cause the jury to convict Steinmetz on an improper basis, that is, on feelings and emotions as opposed to the facts of the case. For these reasons, Defendant requests the Court exclude any testimony of child molestation or sexual abuse as the evidence would be highly prejudicial.

404(b) CRIMES, WRONGS OR OTHER ACTS

Defendant anticipates that the Government may seek to introduce evidence of child molestation or sexual abuse through the testimony of witnesses under Federal Rule of Evidence 404(b).

"Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). The prior acts can be admitted into evidence if they go towards a non-character propensity line of reasoning, such as proving motive, opportunity and intent. Fed. R. Evid. 404(b)(2).

This evidence the Government will seek to introduce would not apply to any of the exceptions listed in 404(b), that is the evidence does not show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident. The evidence would be introduced to show the jury that Steinmetz has a specific character trait, that is, he has committed acts of child molestation and therefore, he also has committed the acts charged in the Indictment. Using that character trait, the jury could find that Steinmetz was acting consistent with that character trait by producing child pornography. This character propensity line of reasoning is precisely what 404(b)(1) prohibits. Therefore, the evidence constitutes impermissible character evidence and should be excluded pursuant to Fed. R. Evid. 404(b)(1).

WHEREFORE, for the foregoing reasons, Defendant moves this Court for an order prohibiting the Government from introducing testimony from any witness as to acts of child molestation or sexual abuse.

Respectfully submitted,

/s/Lucille G. Liggett
LUCILLE G. LIGGETT
Assistant Federal Public Defender
1010 Market Street, Suite 200
St. Louis, Missouri 63101
Telephone: (314) 241-1255
Fax: (314) 421-3177
E-mail: Lucy_Liggett@fd.org

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Rob Livergood, Assistant United States Attorney.

/s/Lucille G. Liggett
LUCILLE G. LIGGETT
Assistant Federal Public Defender